

Wage and Hour Division, Labor

§ 552.100

household work not related to caring for the children: *Provided, however*, That such work is incidental, *i.e.*, does not exceed 20 percent of the total hours worked on the particular babysitting assignment.

§ 552.6 Companionship services for the aged or infirm.

As used in section 13(a)(15) of the Act, the term *companionship services* shall mean those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: *Provided, however*, That such work is incidental, *i.e.*, does not exceed 20 percent of the total weekly hours worked. The term “companionship services” does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

Subpart B—Interpretations

§ 552.99 Basis for coverage of domestic service employees.

Congress in section 2(a) of the Act specifically found that the employment of persons in domestic service in households affects commerce. In the legislative history it was pointed out that employees in domestic service employment handle goods such as soaps, mops, detergents, and vacuum cleaners that have moved in or were produced for interstate commerce and also that they free members of the household to themselves to engage in activities in interstate commerce (S. Rep. 93-690, pp. 21-22). The Senate Committee on Labor and Public Welfare “took note of the expanded use of the interstate commerce clause by the Supreme Court in

numerous recent cases (particularly *Katzenbach v. McClung*, 379 U.S. 294 (1964)),” and concluded “that coverage of domestic employees is a vital step in the direction of ensuring that all workers affecting interstate commerce are protected by the Fair Labor Standards Act” (S. Rep. 93-690, pp. 21-22).

§ 552.100 Application of minimum wage and overtime provisions.

(a)(1) Domestic service employees must receive for employment in any household a minimum wage of not less than that required by section 6(a) of the Fair Labor Standards Act.

(2) In addition, domestic service employees who work more than 40 hours in any one workweek for the same employer must be paid overtime compensation at a rate not less than one and one-half times the employee’s regular rate of pay for such excess hours, unless the employee is one who resides in the employer’s household. In the case of employees who reside in the household where they are employed, section 13(b)(21) of the Act provides an overtime, but not a minimum wage, exemption. See § 552.102.

(b) In meeting the wage responsibilities imposed by the Act, employers may take appropriate credit for the reasonable cost or fair value, as determined by the Administrator, of food, lodging and other facilities customarily furnished to the employee by the employer such as drugs, cosmetics, drycleaning, etc. See S. Rep. 93-690, p. 19, and section 3(m) of the Act. Credit may be taken for the reasonable cost or fair value of these facilities only when the employee’s acceptance of them is voluntary and uncoerced. See regulations, part 531. Where uniforms are required by the employer, the cost of the uniforms and their care may not be included in such credit.

(c) For enforcement purposes, the Administrator will accept a credit taken by the employer of up to 37.5 percent of the statutory minimum hourly wage for a breakfast (if furnished), up to 50 percent of the statutory minimum hourly wage for a lunch (if furnished), and up to 62.5 percent of the statutory minimum hourly wage for a dinner (if furnished), which meal credits when combined do not in total exceed 150